

**AN ORDINANCE**

**BY: COUNCIL MEMBER STARNES**

\_\_\_\_\_, 2002

**AN ORDINANCE TO GRANT AN ENCROACHMENT  
EASEMENT TO BELL SOUTH TELECOMMUNICATIONS,  
INC. FOR ENCROACHMENTS INTO THE RIGHT OF  
WAY OF THIRD STREET, AND FOR OTHER PURPOSES.**

WHEREAS, BellSouth Telecommunications, Inc. (hereinafter referred to as "BST"), as part of its Atlanta Metroplan, has developed facilities in the City of Atlanta, Georgia (hereinafter referred to as the "City of Atlanta") on property bounded by West Peachtree, Third, Peachtree and Fifth Streets, consisting of two office buildings containing in the aggregate approximately 839,000 gross square feet, and related parking facilities and other amenities and improvements (hereinafter referred to as the "Midtown Project"); and

WHEREAS, BST desires to make additional improvements to existing buildings on the property owned by BST to the south of the Midtown Project, generally known as BellSouth Center and more particularly described on Exhibit "A" attached hereto (hereinafter referred to as the "BellSouth Center Property"), in order to enhance access to the MARTA rail transit system from the Midtown Project; and

WHEREAS, BST desires to construct and install on the BellSouth Center Property as part of the Midtown Project, certain elements that will encroach into the right of way of Third Street (the "Right of Way"), a public right of way, consisting of a portion of a canopy and stairs, as depicted on those certain developmental site plans described on Exhibit "B" attached hereto (hereinafter referred to as the "Encroaching Elements"); and

WHEREAS, the City of Atlanta is willing to approve the construction, installation, maintenance, repair and replacement of the Encroaching Elements, and the encroachment of the Encroaching Elements into, and the presence and existence of the Encroaching Elements in, the Right of Way.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA  
HEREBY ORDAINS AS FOLLOWS:**

Section One: The Mayor is authorized to accept and execute on behalf of the City of Atlanta an encroachment easement agreement with BST which permits the construction, installation, maintenance, repair and replacement of the Encroaching Elements, and the encroachment of the Encroaching Elements into, and the presence and existence of the Encroaching Elements in, the Right of Way; and

- Section Two      The plans and specifications for the Encroaching Elements must be submitted to the Commissioner of Public Works or his designee and must be approved by said Commissioner; and
- Section Three:    BST must agree to indemnify the City of Atlanta for any damages to persons or property resulting from the construction, installation, maintenance, repair and replacement of the Encroaching Elements; and
- Section Four:    The City Attorney is hereby directed to accept an appropriate encroachment easement agreement for execution by the Mayor, to be approved by the City Attorney as to form, and said encroachment easement agreement shall not become binding upon the City of Atlanta, and the City of Atlanta shall incur no liability under the same until such encroachment easement agreement has been executed by the Mayor and delivered to BST.

Adopted by the City Council \_\_\_\_\_, 2002

Adopted by the Mayor \_\_\_\_\_, 2002

## EXHIBIT "A"

All that tract or parcel of land lying and being in the City of Atlanta in Land Lot 49 of the 14th District of Fulton County, Georgia, and being more particularly described as follows:

**BEGINNING** at an iron pin marking the point of intersection of the northerly right-of-way line of Ponce de Leon Avenue and the easterly right-of-way line of West Peachtree Street, and running thence north 02 degrees 38 minutes 50 seconds west along the easterly right-of-way line of West Peachtree Street, a distance of 184.15 feet to an iron pin; running thence north 04 degrees 21 minutes 00 seconds west along said right-of-way line, a distance of 10.06 feet to an iron pin; running thence north 88 degrees 58 minutes 08 seconds east a distance of 178.79 feet to a point; running thence north 01 degrees 07 minutes 20 seconds west a distance of 86.10 feet to a point; running thence north 89 degrees 27 minutes 18 seconds west a distance of 181.59 feet to a point located on the easterly right-of-way line of West Peachtree Street; running thence north 02 degrees 19 minutes 05 seconds west along said right-of-way line, a distance of 52.63 feet to an iron pin; running thence north 02 degrees 26 minutes 46 seconds west along said right-of-way line, a distance of 44.84 feet to a point; running thence north 02 degrees 26 minutes 45 seconds west along said right-of-way line, a distance of 127.00 feet to an iron pin marking the point of intersection of the easterly right-of-way line of West Peachtree Street and the southerly right-of-way line of Third Street; running thence south 88 degrees 40 minutes 49 seconds east along the southerly right-of-way line of Third Street, a distance of 155.00 feet to an iron pin; running thence in an easterly direction along said right-of-way line, a distance of 10.00 feet to an iron pin; running thence south 89 degrees 03 minutes 01 minute east along said right-of-way line, a distance of 49.95 feet to an iron pin; running thence south 88 degrees 43 minutes 08 seconds east along said right-of-way line, a distance of 50.18 feet to an iron pin; running thence south 88 degrees 41 minutes 00 seconds east along said right-of-way line, a distance of 50.17 feet to an iron pin marking the point of intersection of said right-of-way line and the former west right-of-way line of Cypress Street (now closed); running thence in an easterly direction to an iron pin marking the point of intersection of the southerly right-of-way line of Third Street and the former east right-of-way line of Cypress Street; running thence south 88 degrees 46 minutes 44 seconds east along the southerly right-of-way line of Third Street, a distance of 60.00 feet to a nail; running thence south 88 degrees 46 minutes 47 seconds east along said right-of-way line, a distance of 65.90 feet to a nail; running thence south 00 degrees 58 minutes 25 seconds west a distance of 197.10 feet, more or less, to a point located on the north boundary line of the property described in Deed Book 4165, page 504, Fulton County Records; running thence north 88 degrees 39 minutes 56 seconds west a distance of 122 feet, more or less, to an iron pin located on the former east right-of-way line of Cypress Street (now closed); running thence south 00 degrees 55 minutes 35 seconds east along the former east right-of-way line of Cypress Street (now closed), a distance of 79.38 feet to a railroad spike; running thence north 88 degrees 22 minutes 12 seconds west a distance of 10.33 feet to a point located in the center of the former right-of-way for Cypress Street; running thence in a southerly direction and following the center line of the former right-of-way for Cypress Street at each and every point, a distance of 22.51 feet, more or less, to the point where said center line intersects the northerly right-of-way line of Ponce de Leon Avenue; running thence south 88 degrees 54 minutes 21 seconds west along said right-of-way line, a distance of 9.86 feet to a nail marking the point of intersection of the former west right-of-way line of Cypress Street and the northerly right-of-way line of Ponce de Leon Avenue; running thence south 88 degrees 50 minutes 40 seconds west along the northerly right-of-way line of Ponce de Leon Avenue, a distance of 232.22 feet to an iron pin; running thence south 88 degrees 50 minutes 55 seconds west along said right-of-way line, a distance of 65.50 feet to the iron pin at the point of beginning; as per plat showing boundary survey for "Southern Bell Telephone and Telegraph Company," prepared by Benny L. Bruner, Georgia Registered Land Surveyor No. 1646, dated October 25, 1974, and revised May 27, 1975.

## **Exhibit "B"**

1. Design Development of the BellSouth Midtown Center by J.W. Robinson & Associates, Inc., Thompson, Ventulett, Stainback & Associates, Inc., Engineering Design Technologies, Inc., and Nannis and Associates, Inc. dated September 21, 2001 and last revised November 8, 2001 consisting of pages A402, A202 and LS1.

WHEREAS, Owner desires to construct and install on the BellSouth Center Property, as part of the Midtown Project, certain elements that will encroach into the right of way of Third Street (the "Right of Way"), a public right of way, consisting of a portion of a canopy and stairs, as depicted on those certain developmental site plans described on Exhibit "B" attached hereto (hereinafter referred to as the "Encroaching Elements"); and

WHEREAS, Owner desires to obtain from the City an easement for the construction, installation, maintenance, repair and replacement of the Encroaching Elements, and for the encroachment of the Encroaching Elements into, and the presence and existence of the Encroaching Elements in, the Right of Way; and

WHEREAS, this Agreement has been authorized by an Ordinance adopted by the Council of the City of Atlanta on \_\_\_\_\_, 2002, and approved by the Mayor of the City of Atlanta on \_\_\_\_\_, 2002.

NOW, THEREFORE, in consideration of the foregoing premises, the grants, easements and agreements herein made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Grant of Easement by the City to Owner. The City hereby grants, bargains and conveys to Owner, as an appurtenance to and for the benefit of the BellSouth Center Property, a permanent, perpetual easement for the construction, installation, maintenance, repair and replacement of the Encroaching Elements, and for the encroachment of the Encroaching Elements into, and the presence and existence of the Encroaching Elements in, the Right of Way.

2. Maintenance and Repair. Owner shall maintain the Encroaching Elements in good order and repair, at the sole cost and expense of Owner.

3. Insurance; Self Insurance. At all times during any construction, installation, maintenance, repair or replacement of the Encroaching Elements and the presence and existence of the Encroaching Elements in the Right of Way, Owner shall maintain in force and effect commercial general liability insurance insuring against claims on account of death, bodily injury or property damage. Such insurance shall be obtained and maintained in a reputable insurance company or companies qualified to do business in the State of Georgia and shall afford protection to limits not less than \$1,000,000.00 per occurrence for bodily injury to or personal injury or death of any person and any consequential damage therefrom, and for property damage arising out of any one occurrence. Owner shall be responsible for the costs, expenses and premiums of all policies of insurance that they are required to obtain pursuant to this Section 3. Notwithstanding the foregoing, at all times when BellSouth Telecommunications, Inc. or an affiliate thereof or successor thereto is the owner or lessee of the BellSouth Center Property, such owner or lessee shall have the right to self-insure in lieu of maintaining the insurance required by this Section 3.

4. Indemnity. Owner shall indemnify, defend and hold harmless the City from and against any and all claims, suits, causes of action, liabilities, damages, losses, costs and expenses (including attorneys' fees and expenses actually incurred) which the City may suffer or incur as a result of or in connection with any injury to or death of persons or damage to the BellSouth Center Property to the extent caused by the construction, installation, maintenance, repair and replacement of the Encroaching Elements, or the presence and existence of the Encroaching Elements in the Right of Way.

5. Binding Effect; Appurtenance. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, the City and Owner and their respective successors, successors-in-title and assigns. Notwithstanding the foregoing, the persons and entities from time to time holding fee simple title to the BellSouth Center Property or portions thereof shall be responsible only for the duties, obligations, liabilities and responsibilities of the "Owner" under this Agreement that arise or accrue during the period of time during which such person or entity holds fee simple title to the BellSouth Center Property. Upon conveyance of the BellSouth Center Property, the person or entity making such conveyance shall be relieved from the duties, obligations, liabilities and responsibilities of the "Owner" under this Agreement arising or accruing after the date of such conveyance as to the BellSouth Center Property or portion thereof conveyed, and the successor-in title shall become liable hereunder for all duties, obligations, liabilities and responsibilities of the "Owner" under this Agreement arising or accruing after the date of conveyance. The rights, privileges and easements granted and conveyed hereunder shall exist for the benefit of, and be a burden upon, the BellSouth Center Property and the affected public right-of-way, and shall run with title thereto, and be appurtenant thereto.

6. General Provisions.

(a) Notices. Whenever any notice, demand or request is required or permitted under this Agreement, such notice, demand or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial courier for next business day delivery, to the addresses set forth below their respective executions hereof, or to such other addresses as are specified by written notice given in accordance herewith, or shall be transmitted by facsimile to the number for each party set forth below their respective executions hereof, or to such other numbers as are specified by written notice given in accordance herewith. All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier; and those given by facsimile shall be deemed given on the date of facsimile transmittal. Nonetheless, the time period, if any, in which a response to any notice, demand or request must be given shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Any notice, demand or request not received because of changed address or facsimile number of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the date of facsimile transmittal, on the first calendar

day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be.

(b) Headings. The use of headings, captions and numbers in this Agreement is solely for the convenience of identifying and indexing the various provisions in this Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.

(c) Exhibits. Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

(d) Defined Terms. Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

(e) Pronouns. Wherever appropriate in this Agreement, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

(f) Severability. Wherever possible, each provision of this Agreement is to be interpreted in such manner as to be effective and valid under applicable law. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(g) Non-Waiver. Failure by any party to complain of any action, non-action or breach of any other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by any party of any right arising from any breach of any other party shall not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present or future.

(h) Time of Essence. Time is of the essence of this Agreement.

(i) Applicable Law. This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.

(j) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and all representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of no force or effect.

(k) Modifications. This Agreement shall not be modified or amended in any respect except by a written agreement executed by the parties in the same manner as this Agreement is executed.

(l) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed under seal and delivered by their respective authorized representatives on the day and year first above written.

**CITY:**

**CITY OF ATLANTA**, a municipal corporation

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
Shirley Franklin, Mayor

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: [Deputy] Municipal Clerk

(NOTARY SEAL)

**APPROVED:**

**RECOMMENDED:**

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Chief Operating Officer

\_\_\_\_\_  
Commissioner, Department of \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Department of \_\_\_\_\_

\_\_\_\_\_  
Commissioner, Department of \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
[Deputy] City Attorney

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_\_

(NOTARY SEAL)

**OWNER:**

**BELLSOUTH  
TELECOMMUNICATIONS, INC., a  
Georgia corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT "A"

All that tract or parcel of land lying and being in the City of Atlanta in Land Lot 49 of the 14th District of Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin marking the point of intersection of the northerly right-of-way line of Ponce de Leon Avenue and the easterly right-of-way line of West Peachtree Street, and running thence north 02 degrees 38 minutes 50 seconds west along the easterly right-of-way line of West Peachtree Street, a distance of 184.15 feet to an iron pin; running thence north 04 degrees 21 minutes 00 seconds west along said right-of-way line, a distance of 10.06 feet to an iron pin; running thence north 88 degrees 58 minutes 08 seconds east a distance of 178.79 feet to a point; running thence north 01 degrees 07 minutes 20 seconds west a distance of 86.10 feet to a point; running thence north 89 degrees 27 minutes 18 seconds west a distance of 181.59 feet to a point located on the easterly right-of-way line of West Peachtree Street; running thence north 02 degrees 19 minutes 05 seconds west along said right-of-way line, a distance of 52.63 feet to an iron pin; running thence north 02 degrees 26 minutes 46 seconds west along said right-of-way line, a distance of 44.84 feet to a point; running thence north 02 degrees 26 minutes 45 seconds west along said right-of-way line, a distance of 127.00 feet to an iron pin marking the point of intersection of the easterly right-of-way line of West Peachtree Street and the southerly right-of-way line of Third Street; running thence south 88 degrees 40 minutes 49 seconds east along the southerly right-of-way line of Third Street, a distance of 155.00 feet to an iron pin; running thence in an easterly direction along said right-of-way line, a distance of 10.00 feet to an iron pin; running thence south 89 degrees 03 minutes 01 minute east along said right-of-way line, a distance of 49.95 feet to an iron pin; running thence south 88 degrees 43 minutes 08 seconds east along said right-of-way line, a distance of 50.18 feet to an iron pin; running thence south 88 degrees 41 minutes 00 seconds east along said right-of-way line, a distance of 50.17 feet to an iron pin marking the point of intersection of said right-of-way line and the former west right-of-way line of Cypress Street (now closed); running thence in an easterly direction to an iron pin marking the point of intersection of the southerly right-of-way line of Third Street and the former east right-of-way line of Cypress Street; running thence south 88 degrees 46 minutes 44 seconds east along the southerly right-of-way line of Third Street, a distance of 60.00 feet to a nail; running thence south 88 degrees 46 minutes 47 seconds east along said right-of-way line, a distance of 65.90 feet to a nail; running thence south 00 degrees 58 minutes 25 seconds west a distance of 197.10 feet, more or less, to a point located on the north boundary line of the property described in Deed Book 4165, page 504, Fulton County Records; running thence north 88 degrees 39 minutes 56 seconds west a distance of 122 feet, more or less, to an iron pin located on the former east right-of-way line of Cypress Street (now closed); running thence south 00 degrees 55 minutes 35 seconds east along the former east right-of-way line of Cypress Street (now closed), a distance of 79.38 feet to a railroad spike; running thence north 88 degrees 22 minutes 12 seconds west a distance of 10.33 feet to a point located in the center of the former right-of-way for Cypress Street; running thence in a southerly direction and following the center line of the former right-of-way for Cypress Street at each and every point, a distance of 22.51 feet, more or less, to the point where said center line intersects the northerly right-of-way line of Ponce de Leon Avenue; running thence south 88 degrees 54 minutes 21 seconds west along said right-of-way line, a distance of 9.86 feet to a nail marking the point of intersection of the former west right-of-way line of Cypress Street and the northerly right-of-way line of Ponce de Leon Avenue; running thence south 88 degrees 50 minutes 40 seconds west along the northerly right-of-way line of Ponce de Leon Avenue, a distance of 232.22 feet to an iron pin; running thence south 88 degrees 50 minutes 55 seconds west along said right-of-way line, a distance of 65.50 feet to the iron pin at the point of beginning; as per plat showing boundary survey for "Southern Bell Telephone and Telegraph Company," prepared by Benny L. Bruner, Georgia Registered Land Surveyor No. 1646, dated October 25, 1974, and revised May 27, 1975.

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**LARGE ATTACHMENT:**

**DOCUMENT(S),**

**MANUAL(S)**

**OR**

**MAP(S)**

**NOT COPIED,**

**PULL ORIGINAL**

**FOR COPY OR TO VIEW**

02-0-0867

(Do Not Write Above This Line)

An Ordinance by Councilmember Debi Starnes:

An Ordinance to grant an encroachment easement to Bellsouth Telecommunications, Inc. for encroachments into the right of way of Third Street; and for other purposes.

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☒ PERSONAL PAPER REFER

Date Referred 5/8/02  
Referred To: City Utilities  
Date Referred  
Referred To:  
Date Referred  
Referred To:

First Reading

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Referred to \_\_\_\_\_

Committee	Committee
Date	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side) Other:	Action: Fav, Adv, Hold (see rev. side) Other:
Members	Members
Refer To	Refer To

Committee	Committee
Date	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side) Other:	Action: Fav, Adv, Hold (see rev. side) Other:
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

- ☐ 2nd
- ☐ 1st & 2nd Readings
- ☐ Consent
- ☐ V Vote
- ☐ RC Vote
- ☐ 3rd

CERTIFIED

MAYOR'S ACTION